



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Interested Persons  
From: Jonathan Wayne, Executive Director  
Date: October 30, 2007  
Re: Summary of Proposed Amendments to Ethics Commission Rules

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**Chapter 1, Section 1(19) – Definition of “Write-In Candidate”**

The proposed amendment to the definition of “write-in candidate” would bring it into conformity with the definition in the Election Law at 21-A M.R.S.A. § 1(51).

**Chapter 1, Section 2(2)(A) – Commission Hours of Operation**

The proposed insertion clarifies that – when permitted by statute – documents may be filed with the Commission outside of normal business hours electronically or by facsimile. For example, the Election Law permits candidates to file campaign finance reports electronically under 21-A M.R.S.A. § 1017(10) and to file written campaign finance reports by facsimile under 21-A M.R.S.A. § 1020-A(4-A).

**Chapter 1, Section 3(4) – Providing Official Notice of Commission Meetings**

The Commission’s regular practice is to provide notice of upcoming meetings to interested individuals by mailing a copy of the agenda seven days before the meeting. The proposed changes to the Commission’s rules are not intended to significantly modify the Commission’s current practice, but rather to state more clearly those individuals and groups that must receive the notice.

**Chapter 1, Section 4(2)(C) – Handling of Maine Clean Election Act Violations**

The proposed insertion clarifies that the procedures for handling complaints about campaign finance reporting violations also apply to complaints about violations of the Maine Clean Election Act.

**Chapter 1, Sections 4(2)(E) and 4(4) – Matters Outside the Commission’s Jurisdiction**

Current Section 4(2)(E) provides a procedure by which the Commission staff can administratively reject a complaint that is outside the Commission’s jurisdiction, provided that the staff notifies the Commission members of the rejection at their next meeting. The proposed changes move this language to a new subsection 4(4) in order to emphasize that the rejection procedure applies not just to allegations of campaign finance violations, but also to other topics that are outside the Commission’s jurisdiction (*e.g.*,

complaints about the content of political speech or misconduct by executive branch officials).

### **Chapter 1, Section 5(1) – Preliminary Fact-Finding by Commission Staff**

Under the current rule, the Commission staff is authorized to gather facts preliminarily in order to recommend to the Commission whether there appears to be a violation of law or whether a fuller investigation is necessary. The proposed changes would clarify that the staff can engage in preliminary fact-finding on its own initiative – even if no complaint has been filed with the Commission. Also, consistent with the exception to the Executive Session statute at 1 M.R.S.A. § 405(6)(E) for consultations with counsel, the amendment confirms that the Commission could discuss the issuance of a subpoena with its Counsel in executive session when premature public knowledge of the investigation would place the Commission or another investigatory office at a substantial disadvantage.

### **Chapter 1, Section 7(5) – Campaign Reimbursements to Maine Clean Election Act Candidates (major substantive)**

Under the proposed amendment, if a Maine Clean Election Act candidate uses his or her personal funds for a campaign expenditure, the campaign must reimburse the candidate within the time period covered by the campaign finance report.

### **Chapter 1, Section 7(7) – Non-Express Advocacy Expenditures**

Political action committees (PACs) are required to file regular campaign finance reports with the Commission. Among the financial activities that must be disclosed, PACs must report expenditures made “on behalf of” candidates as well as general operational expenses:

**4. Itemized expenditures.** An itemization of each expenditure made on behalf of any candidate, campaign, political committee, political action committee and party committee or to support or oppose a referendum or initiated petition, including the date, payee and purpose of the expenditure; the name of each candidate, campaign, political committee, political action committee or party committee on whose behalf the expenditure was made; and each referendum or initiated petition supported or opposed by the expenditure. (underlining added)

**7. Other expenditures.** Operational expenses and other expenditures in cash or in kind that are not made on behalf of a candidate, committee or campaign. (21-A M.R.S.A. §§ 1060(4) and (7))

Similar reporting requirements apply to party committees (state, county, and municipal) under 21-A M.R.S.A. § 1017-A(2) and (3).

Some PACs and party committees report the costs of political mailings as operating expenditures on Schedule B-1 of their campaign finance reports. This disclosure does not seem to comply with 21-A M.R.S.A. § 1060(4) because it does not identify the candidate(s) supported. Also, if the expenditure benefits more than one candidate (*e.g.*, a payment to a printer to send mailings into three legislative districts), the reporting of the payment as an operational expenditure does not break down the amount spent per candidate.

The proposed change would clarify that even if a communication does not expressly advocate the election of a candidate, the costs of the communication must be reported on Schedule B of the reporting form and must specify the candidate supported and the amount spent to support that candidate.

### **Chapter 1, Section 9 – Filing Schedule for Accelerated Reports**

This rule sets forth the filing schedule for “accelerated reports” which are required for some traditionally financed candidates who have Maine Clean Election Act opponents. The proposed rule amendments modify the filing schedule to be consistent with statutory changes made by Chapter 443 of the Public Laws of 2007.

### **Chapter 1, Section 10(3)(A) – Filing Schedule for Independent Expenditure Reports**

As defined by the Election Law (21-A M.R.S.A. § 1019-B), independent expenditures are payments for communications to voters that are made independently of candidates by third-parties such as PACs and party committees. Section 10(3)(A) sets forth the filing schedule for reporting independent expenditures between \$100 and \$250 per candidate. The proposed changes to the rule are in accordance with 2007 changes to the Election Law, under which the pre-election report for PACs and party committees covers through the 14<sup>th</sup> day before the election.

### **Chapter 1, Section 10(5)(first paragraph) and (5)(D) – Rebuttable Presumption**

Under 21-A M.R.S.A. § 1019-B(2), if a political group distributes a communication to voters in the final weeks before an election that names or depicts a clearly identified candidate, the cost of the communication is presumed to be an independent expenditure and the group must file a report of the expenditure unless the group successfully rebuts the presumption before the Commission. In accordance with 2007 changes to the Election Law, the proposed amendment increases the general election period during which this presumption applies from 21 days before the election to 35 days.

### **Chapter 1, Section 10(5)(B)(1) – Exception for News Stories**

The Election Law contains an exception to the definition of the term “expenditure” for a newspaper or broadcast station’s costs for news stories and editorials relating to an election. The exception was amended by the Legislature in 2007 so that it does not cover a newspaper or broadcast station owned or controlled by the candidate’s immediate

family. The proposed change to Section 10(5)(B)(1) reflects that change. As a result, payments for a communication to voters in the last 35 days before a general election made by a news outlet owned or controlled by a member of a candidate's family may be presumed to be an independent expenditure under 21-A M.R.S.A. § 1019(B)(2).

### **Chapter 1, Section 11 – Filing Schedule for § 1056-B Reports**

Section 11 sets forth the filing schedule for organizations that do not qualify as PACs but which spend more than \$1,500 to influence a ballot question. The proposed changes conform the schedule to 2007 statutory amendments to the PAC filing schedule.

## **PROPOSED AMENDMENT TO CAMPAIGN FINANCE REPORTING FORM**

The Election Law requires that any changes to the campaign finance reporting form used by candidates must be made through a rulemaking. (21-A M.R.S.A. § 1017(6))

The Commission staff proposes to eliminate Schedule E of the form for candidates who are traditionally financed (*i.e.*, funding their campaigns through accepting traditional campaign contributions). Schedule E requires candidates to list campaign property or equipment that could be converted to the candidate's personal use after an election (*e.g.*, computers, fax machines, or telephones) and to disclose how such property or equipment is disposed of.

The staff proposes eliminating the schedule because the Election Law does not require that this information be reported by privately financed candidates, so the Commission's legal basis for requesting this disclosure is not clear. Schedule E would continue to be required for Maine Clean Election Act candidates who have purchased this equipment with public funds.

### **Chapter 3, Section 5(3)(G) – Maximum Matching Funds (major substantive)**

To be consistent with 2007 statutory changes, the proposed amendment states that the maximum amount of matching funds paid to a candidate for Governor for a general election is equal to the amount initially paid to that candidate for the election (currently \$400,000).

### **Chapter 3, Section 7(1)(A) – Separate Bank Account for Seed Money (major substantive)**

The proposed amendment clarifies that all campaign funds of a Maine Clean Election Act candidate (including seed money) must be segregated in a separate bank account and not commingled with the candidate's personal funds, as already required by 21-A M.R.S.A. § 1016(1).